

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GAETANO DEVELOPMENT CORP., GATEWAY
IV, LLC, and HARTFORD FIRE INSURANCE
COMPANY a/s/o Gateway IV, LLC,

Plaintiffs,

-against-

GOODMAN MANUFACTURING COMPANY, L.P.,
GOODMAN COMPANY, L.P. and GOODMAN
GLOBAL, INC.,

Defendants.
----- X

GOODMAN COMPANY, L.P.,

Third-Party Plaintiff,

-against-

TOWER MANUFACTURING CORPORATION,

Third-Party Defendant.
----- X

TOWER MANUFACTURING CORPORATION,

Second Third-Party Plaintiff,

-against-

EVEREX COMMUNICATIONS, INC., PRIME
TECHNOLOGY (GUANGZHOU), INC.,
CONNECTICUT PTAC SERVICES, LLC, and
COOL TECH HVAC SERVICE, LLC

Second Third-Party Defendants.
----- X

Case No. 09-CV-10090
(Consolidated)

TOWER'S OPPOSITION TO PRIME'S LOCAL RULE 56.1 STATEMENT

Tower provides the following response to second third-party defendant, Prime Technology (Guangzhou), Inc.'s Local Rule 56.1 Statement of Undisputed Material

Facts:

1. Admitted
2. Admitted
3. Admitted
4. Admitted
5. Admitted
6. Admitted
7. Admitted
8. Admitted
9. Admitted
10. Admitted
11. Admitted
12. Admitted
13. Admitted
14. Admitted
15. Admitted
16. Admitted

17. Admitted but Tower denies the accuracy of the allegations. See report of Allen Eberhardt, Ph.D. at Ex. G to Haworth Dec. in Support of Summary Judgment and report of Andrew Neuhaufen, Ph.D. at Ex. A to Haworth Dec. in Opposition to Summary Judgment.

18. Admitted

19. Admitted

20. Admitted

21. Admitted

22. Admitted

23. Objection calls for a legal conclusion. Without waiver, Tower admits that Goodman's right to seek contribution against Tower is waived but denies that Tower's right to seek contribution against Prime is extinguished because Tower is not a settling party. See Tower Memorandum of Law in Opposition to Summary Judgment.

24. Objection calls for a legal conclusion. Without waiver, denied. See Tower Memorandum of Law in Opposition to Summary Judgment.

TOWER'S COUNTER STATEMENT OF DISPUTED MATERIAL FACTS

In opposition to Prime's summary judgment motion, Tower relies on the facts set forth in its Rule 56.1 statement in support of its summary judgment motion and also submits this counter statement of material facts in opposition. Tower contends that the following facts are supported by evidence, that these facts are material, and that, to the extent not admitted by Prime, there is at least a genuine dispute as to these material facts:

1. Photographs of the cross-sections of various crimp connections from pre-recalled cords show that there was "adequate compression of the wire strands for the copper conductors within the barrel of the crimp connection" and that "deformation of the wire strands of the black conductor was proper for an acceptable and reliable electrical connection and mechanical connection of a crimp terminal." See Neuhalfen Rpt., p. 7-9 at Ex. A to Haworth Dec. in Opposition to Summary Judgment.

2. Power cords recovered from the PTAC fires at plaintiff's building had not exhibited melt prior to being exposed to heat from an external fire and the characteristics of the damage to the insulation is not associated with the operation of an improper crimp connection. *Id.* at p. 6.

3. Prime misapplies the spacing requirement set forth under UL 873. See Neuhaufen Rpt., p. 6-7 at Ex. A to Haworth Dec. in Opposition to Summary Judgment; Eberhardt Rpt., p. 3, 5-6 at Ex. G to Haworth Dec. in Opposition to Summary Judgment.

4. The wiring diagrams of the PTAC show that there are operational modes when the relay is open and the Line 2 and Compressor circuits are at opposite polarity requiring a spacing of $\frac{1}{4}$ inch distance apart to comply with UL 873. See Neuhaufen Rpt., p. 6-7 at Ex. A to Haworth Dec. in Opposition to Summary Judgment; Eberhardt Rpt., p. 3, 5-6 at Ex. G to Haworth Dec. in Opposition to Summary Judgment.

5. There is no reference anywhere in the UL certification report for the M61 that a footnote to UL 873 applies allowing the spacing of the Line 2 and Compressor circuits to be less than $\frac{1}{4}$ inches apart. See M61 UL Report at Ex. C to Haworth Dec. in Opposition to Summary Judgment.

6. There is no evidence that UL evaluated the spacing of the M61 circuit board let alone tested the M61 in a fully functioning and wired PTAC unit so as to determine whether there were certain operational modes when the Line 2 and Compressor circuits would be of opposite polarity and therefore would need to be spaced at a minimum $\frac{1}{4}$ apart. See Chan Dep., p. 28 at Ex. B to Haworth Dec. in Opposition to Summary Judgment.

7. Everex and Prime's failure to provide adequate spacing leaves no margin of error and makes the M61 prone to arc tracking should the space between the traces become contaminated with moisture, dust, other contaminants from the manufacturing process or even claimed PVC deposits from melted insulation. See Neuhalfen Rpt., p. 6-7 at Ex. A to Haworth Dec. in Opposition to Summary Judgment; Eberhardt Rpt., p. 5 at Ex. G to Haworth Dec. in Support of Summary Judgment.

8. Had the M61 been designed to comply with UL's ¼ inch spacing requirement, it would have had the necessary margin of error to avoid the risk and the resulting PTAC fires. See Neuhalfen Rpt., p. 6-7 at Ex. A to Haworth Dec. in Opposition to Summary Judgment; Eberhardt Rpt., p. 5 at Ex. G to Haworth Dec. in Support of Summary Judgment.

Dated: New York, New York
February 28, 2011



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CERTIFICATE OF SERVICE

I, Scott L. Haworth, hereby certify and affirm that a true and correct copy of the attached **TOWER MANUFACTURING CORPORATION'S OPPOSITION TO PRIME'S LOCAL RULE 56.1 STATEMENT** was served via ECF on February 28, 2011, upon the following:

Dennis Perlberg, Esq.
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Dated: New York, New York
February 28, 2011

A handwritten signature in black ink, appearing to read "Scott L. Haworth", with a long horizontal flourish extending to the right.

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